

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3 IN RE WESTERN STATES WHOLESALE)
4 NATURAL GAS ANTITRUST)
5 LITIGATION)

MDL Docket No. 1566

Base Case No. 2:03-cv-01431-RCJ-PAL

6 THIS DOCUMENT RELATES TO:)

7 *Learjet, Inc., et al. v. ONEOK Inc., et al.*)

Case No. 2:06-cv-00233-RCJ-PAL

8 *Heartland Regional Medical Center, et al. v.*)
9 *ONEOK Inc., et al.*)

Case No. 2:07-cv-00987-RCJ-PAL

10 *Arandell Corp., et al. v. Xcel Energy, Inc., et*)
11 *al.*)

Case No. 2:07-cv-01019-RCJ-PAL

12 *NewPage Wisconsin System Inc. v. CMS*)
13 *Energy Resource Management Co., et al.*)

Case No. 2:09-cv-00915-RCJ-PAL

14 **FINAL JUDGMENT OF DISMISSAL WITH PREJUDICE**
15 **AS TO AMERICAN ELECTRIC POWER COMPANY, INC.**
16 **AND AEP ENERGY SERVICES, INC.**

17 This matter has come before the Court to determine whether there is any cause why this
18 Court should not approve the settlement between Plaintiffs in the above-captioned Actions on behalf
19 of the Midwest Classes, and American Electric Power Company, Inc. and AEP Energy Services, Inc.
20 (collectively, “AEP”), as set forth in the Settlement Agreement dated September 1, 2016 (the
21 “Agreement”). The Court, after carefully considering all papers filed and proceedings held herein
22 and otherwise being fully informed in the premises, has determined (1) that the settlement should be
23 approved, and (2) that there is no just reason for delay of the entry of this Final Judgment approving
24 the Agreement. Accordingly, the Court directs entry of Judgment which shall constitute a final
25 adjudication of the above-captioned Actions on the merits in accordance with the terms of the
26 Agreement. Good cause appearing therefor, it is:

27 **ORDERED, ADJUDGED AND DECREED THAT:**
28

1 1. The Court has jurisdiction over the subject matter of the Actions and over all parties
2 to the Agreement, including all members of the Midwest Classes based upon the Court’s findings
3 and conclusions herein that such settlement class members have been afforded the due process
4 protections of notice, an opportunity to be heard, a right to exclude themselves from the Midwest
5 Classes and adequate representation. *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797 (1985).

6 2. All terms which are defined in the Agreement and used but not otherwise defined
7 herein shall have the meanings ascribed to them in the Agreement, all of which are incorporated
8 herein as though fully set forth in this Final Judgment.

9 3. By its Preliminary Approval Order, the Court certified, for purposes of settlement
10 only, these Actions as class actions against AEP under Federal Rule of Civil Procedure 23(b)(3). The
11 Classes are defined as follows:

12 A. “Kansas Class” means:

13 All industrial and commercial direct purchasers of natural gas for their
14 own use or consumption during the period from January 1, 2000
15 through October 31, 2002, and which gas was used or consumed by
16 them in Kansas. Excluded from the Class are (a) entities that
17 purchased natural gas for resale (to the extent of such purchase(s) for
18 resale); (b) entities that purchased natural gas for generation of
19 electricity for the purpose of sale (to the extent of such purchase(s) for
20 generation); (c) defendants and their predecessors, affiliates, and
21 subsidiaries; (d) the federal government and its agencies; and (e)
22 Reorganized FLI, Inc. (f/k/a Farmland Industries, Inc.).

23 For purposes of the Kansas Class definition, a “direct purchaser”
24 means an industrial or commercial entity that bought natural gas for its
25 own use or consumption directly from any of the defendants in the
26 Actions or from a seller other than a local distribution company.

27 B. “Missouri Class” means:

28 All industrial and commercial direct purchasers of natural gas for their
own use or consumption during the period from January 1, 2000
through October 31, 2002, and which gas was used or consumed by
them in Missouri. Excluded from the Class are (a) entities that
purchased natural gas for resale (to the extent of such purchase(s) for
resale); (b) entities that purchased natural gas for generation of
electricity for the purpose of sale (to the extent of such purchase(s) for
generation); (c) defendants and their predecessors, affiliates, and
subsidiaries; (d) the federal government and its agencies; and (e)
Reorganized FLI, Inc. (f/k/a Farmland Industries, Inc.).

1 For purposes of the Missouri Class definition, a “direct purchaser”
2 means an industrial or commercial entity that bought natural gas for its
3 own use or consumption directly from any of the defendants in the
4 Actions or from a seller other than a local distribution company.

5 C. “Wisconsin Class” means:

6 All industrial and commercial purchasers of natural gas for their own
7 use and consumption during the period from January 1, 2000 through
8 October 31, 2002, which gas was used or consumed by them in
9 Wisconsin. Excluded from the class are (a) entities that purchased
10 natural gas for resale (to the extent of such purchase(s) for resale); (b)
11 entities that purchased natural gas for generation of electricity for the
12 purpose of sale (to the extent of such purchase(s) for generation); (c)
13 entities that purchased natural gas from entities that sold natural gas
14 at rates approved by a State regulatory entity or public service
15 commission (to the extent of such purchases at such approved rates);
16 (d) defendants and their predecessors, affiliates and subsidiaries; (e)
17 the federal government and its agencies; and (f) Reorganized FLI, Inc.
18 (f/k/a Farmland Industries, Inc.).

19 D. “Midwest Classes” means, collectively, the Kansas Class, the Missouri Class, and the
20 Wisconsin Class.

21 E. “Class Member” means each member of any one or more of the Midwest Classes.

22 F. “Class Period” means, with respect to each of the Midwest Classes, the period from
23 January 1, 2000 through October 31, 2002.

24 4. The Actions are, for settlement purposes, certified as class actions against AEP
25 pursuant to Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure for each and all of the
26 Midwest Classes defined in paragraph 3 above and with respect to the Class Period defined in
27 paragraph 3 above. Certification of the Midwest Classes is appropriate because:

28 a. The Court finds that the requirements of Rule 23(a) of the Federal Rules of Civil
Procedure have been met:

(i) The Midwest Classes, are so numerous that joinder of all members is
impracticable;

(ii) The Plaintiffs’ claims against AEP and the defenses thereto present questions
of law or fact common to the Midwest Classes;

- 1 (iii) The claims against AEP brought by the Plaintiffs in the Actions, as industrial
2 and commercial purchasers of natural gas for their own use and consumption
3 during the Class Period, are typical of the claims of, or defenses to the claims
4 of, members of the Midwest Classes against AEP;
- 5 (iv) Class Counsel for the Midwest Classes have fairly, adequately and vigorously
6 represented the interests of the Midwest Classes as respects claims against
7 AEP; and
- 8 (v) Based on their active participation in discovery and the settlement, the
9 Plaintiffs in the Actions have fairly, adequately and vigorously represented the
10 interests of the Midwest Classes as respects AEP.

11 b. The Court finds that the requirements of Rule 23(b)(3) of the Federal Rules of Civil
12 Procedure have been met:

- 13 (i) Questions of law or fact relating to whether AEP engaged in false or
14 inaccurate reporting of natural gas transactions to the publishers of natural gas
15 price indexes, or engaged in other unlawful conduct including natural gas
16 wash trading or churning transactions, in furtherance of a conspiracy to
17 manipulate prices for natural gas during the Class Period predominate over
18 any questions affecting only individual members of any of the Midwest
19 Classes;
- 20 (ii) There are no competing actions or any suggestions that a more efficient
21 alternative to the Actions against AEP exists, and the Actions are the superior
22 method for the fair and efficient adjudication of this controversy; and
- 23 (iii) Manageability for trial purposes is not an issue and need not be considered in
24 determining whether to certify the Midwest Classes herein for purposes of
25 settlement. *See Amchem v. Windsor*, 512 U.S. 591, 619 (1997).

26 c. Certification of class actions, such as the Actions, for the purpose of settlement, is
27 desirable to facilitate resolution of complex litigation such as this litigation.
28

1 5. The Court hereby finally approves and confirms the settlement set forth in the
2 Agreement and finds that said settlement is, in all respects, fair, reasonable, and adequate to the
3 Midwest Classes pursuant to Rule 23 of the Federal Rules of Civil Procedure. In reaching this
4 determination, the Court has, based upon the evidence presented and its independent inquiry,
5 analysis and due diligence, considered: the serious questions of fact and law raised by Plaintiffs’
6 claims and AEP’s potential defenses in the Actions; the risk, expense, complexity, and likely
7 duration of further litigation; the risk of obtaining, and maintaining throughout trial and potential
8 appeal, class action status; the benefits of the Settlement; the extent of discovery completed and the
9 stage of the proceedings; the experience and views of counsel that the Settlement is fair and
10 reasonable; and the reaction(s) of the Midwest Class members to the Settlement (both as to the
11 number of requests for exclusion from the Midwest Classes and as to the number and nature of the
12 objections to the Settlement).

13 6. The Court hereby finds and concludes that the notice given to the Midwest Classes
14 complied with this Court’s Preliminary Approval Order, and that said notice was the best notice
15 practicable under the circumstances and fully satisfies the requirements of Rule 23 of the Federal
16 Rules of Civil Procedure and the requirements of due process, including, but not limited to, the form
17 of notice and methods of identifying and giving notice to the Midwest Classes of, *inter alia*, the
18 Settlement terms, their rights to object to or exclude themselves from the Settlement (and the
19 procedures to do so), and the Fairness Hearing.

20 7. Pursuant to Fed. R. Civ. P. 23(g), Polsinelli PC, McCallister Law Group, LLC, and
21 Barry Law Offices, LLC are appointed as co-counsel for the Kansas Class; Polsinelli PC and Barry
22 Law Offices, LLC are appointed as co-counsel for the Missouri Class, and Polsinelli PC, Kohner,
23 Mann & Kailas S.C., and Barry Law Offices, LLC are appointed as co-counsel for the Wisconsin
24 Class. These firms have and will fairly, adequately, vigorously and competently represent the
25 interests of the Midwest Classes. In particular, the Court finds that the Agreement is the result of
26 extensive, good-faith arm’s-length negotiations between the parties, and not the result of any
27 collusion or reverse auction.

1 8. As of the April 11, 2017 deadline designated in this Court's Preliminary Approval
2 Order, no persons/entities requested exclusion from the Midwest Classes. Because no member of
3 any of the Midwest Classes submitted a timely and valid request, or indeed, any request, for
4 exclusion from the Midwest Classes, all members of any of the Midwest Classes are hereby (i)
5 barred from asserting otherwise and (ii) bound by the terms of the Agreement, including the releases
6 of claims, and by this Final Judgment.

7 9. There were no objections filed to this Settlement. Any member of the Midwest
8 Classes who failed to object or seek to intervene is conclusively deemed to have waived the right to
9 object or intervene and is barred from raising any objection to the Settlement or this Final Judgment
10 in this or any other proceeding, including in an appeal.

11 10. This Court hereby dismisses on the merits and with prejudice, with each party to bear
12 its own costs and attorneys' fees, these Actions as against AEP and as to all members of any of the
13 Midwest Classes.

14 11. Pursuant to paragraph 20 of the Agreement, the Releasees are hereby and forever
15 released and discharged from and with respect to any and all claims, demands, actions, suits, causes
16 of action for injuries, losses, damages or other consequences of every nature (whether known or
17 unknown, foreseen or unforeseen, suspected or unsuspected, actual or contingent, liquidated or
18 unliquidated, legal or equitable) that Releasors or any of them ever had, now has, or hereafter can,
19 shall, or may have in any capacity (whether class, individual, direct, derivative, representative or any
20 other capacity) on account of, or in any way arising out of, or relating in any way to any act or
21 omission of the Releasees or the other named defendants/alleged co-conspirators or any third party
22 alleged co-conspirators (or any of them) that is alleged in the Actions up to the date of the execution
23 of this Agreement or that could have been alleged in the Actions or in any other proceeding alleging
24 such acts or omissions (the "Released Claims"). All persons and entities who are Releasors are
25 hereby barred and permanently enjoined from commencing, prosecuting or continuing, either
26 directly or indirectly, against any of the Releasees, in this or any other jurisdiction, any and all
27 Released Claims and any other claims arising from any conduct alleged in any of the Actions. The
28 Released Claims shall not preclude Plaintiffs from pursuing any and all claims against any

1 defendants in the Actions other than AEP. Likewise, the Released Claims shall not impede
2 Plaintiffs' rights to pursue claims against the non-settling Defendants to recover for the full amount
3 of Plaintiffs' and Class Members' alleged damages as provided by applicable law.

4 12. Neither the Agreement, the preliminary approval of the settlement and conditional
5 certification for settlement purposes of the Midwest Classes, nor this Final Judgment (nor any
6 negotiations or documents associated with them) are to be deemed an admission of liability or fault
7 by AEP or by any of the Releasees, or a finding of the validity of any facts, allegations or claims
8 asserted in the Actions, or of any wrongdoing or of any violation of law by AEP or any of the
9 Releasees, or that any person has suffered any damage attributable to AEP or any of the Releasees,
10 or an admission by AEP or any of the Releasees as to the certifiability of a litigation class in the
11 Actions, or any other case. Neither the Agreement, nor any of its terms and provisions, nor any of
12 the negotiations or proceedings connected with it, nor any other action taken to carry out the
13 Agreement by any of the settling parties shall be referred to, offered as evidence or received in
14 evidence in any pending or future civil, criminal, or administrative action or proceedings, except in a
15 proceeding to enforce the Agreement, or to defend against the assertion of Released Claims, or as
16 otherwise required by law.

17 13. If for any reason this Final Judgment does not become "final" as provided in
18 paragraph 17 of the Agreement, and if either AEP or Plaintiffs thereafter exercise their unilateral
19 option(s) to rescind the Settlement, terminate the Agreement and withdraw that Party's consent to
20 the entry of this Final Judgment, then: (i) any preliminary or final certification of the Midwest
21 Classes shall be automatically vacated, *nunc pro tunc*; (ii) all other provisions set forth in paragraph
22 16 of the Agreement shall apply; and (iii) any and all amounts paid by AEP into the Settlement Fund
23 and/or deposited in the Escrow Account (including interest earned thereon) shall be returned to AEP
24 within thirty (30) calendar days, less only disbursements made in accordance with paragraphs 23 and
25 24 of the Agreement.

26 14. Without affecting the finality of this Judgment in any way, this Court hereby retains
27 continuing jurisdiction over: (a) implementation of this settlement and any distribution to Class
28 Members pursuant to further orders of this Court; (b) disposition of the Settlement Fund; (c) hearing

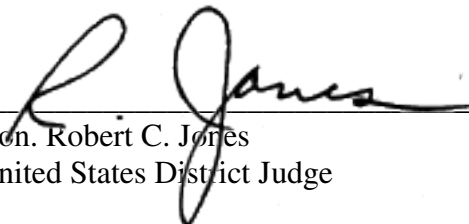
1 and determining applications by Plaintiffs' counsel for attorneys' fees, costs, expenses, and interest;
2 (d) the Actions until the Final Judgment contemplated hereby has become effective and each and
3 every act agreed to be performed by the parties has been performed pursuant to the Agreement;
4 (e) hearing and ruling on any matters relating to the plan of allocation of settlement proceeds; and
5 (f) all parties to the Actions and Releasers, for the purpose of enforcing and administering the
6 Agreement and the releases and other documents contemplated by, or executed in connection with,
7 the Agreement.

8 15. The Court finds, pursuant to Rules 54(a) and (b) of the Federal Rules of Civil
9 Procedure, that this Final Judgment should be entered and further finds that there is no just reason
10 for delay in the entry of this Judgment, as a Final Judgment, as to the parties to the Agreement.
11 Accordingly, the Clerk is hereby directed to enter Judgment forthwith.

12 17. Nothing in this Order shall be construed to expand the obligations of AEP under the
13 Agreement or to impose on AEP any obligations other than those contained in the Agreement.

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15 **IT IS SO ORDERED.**

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17 Dated: _____ June 5, 2017 _____

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19 Hon. Robert C. Jones
20 United States District Judge
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